

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHERYL J MARTIN,

Petitioner,

v.

DAVID FLYNN,

Respondent.

CASE NO. 3:15-CV-05766-BHS-DWC

REPORT AND RECOMMENDATION

Noting Date: December 4, 2015

The District Court has referred this action, filed under 28 U.S.C. § 2254, to United States Magistrate Judge David W. Christel. Presently pending before the Court is Petitioner's Motion to Proceed *In Forma Pauperis* (IFP). Dkt. 1, 3.

The right to proceed IFP is not absolute. *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). Proceeding IFP is a matter within the sound discretion of the trial court in civil actions. *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963). Petitioner submitted her prison trust account statement showing a spendable balance of \$142.18. Dkt. 3, p. 3. Petitioner can afford to pay the \$5.00 filing fee. Accordingly, the Court recommends denying the Motion to Proceed IFP.

1 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
2 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
3 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *See*
4 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the
5 clerk is directed to set the matter for consideration on December 4, 2015, as noted in the caption.

6 Dated this 16th day of November, 2015.

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9 David W. Christel
United States Magistrate Judge
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